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11 THE UNITED STATES DISTRICT COURT
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

13 JOHN DURANT, an individual,
14
15 Plaintiff,

CASE No.: '15CV2771 WQHJLB

16 vs.

17 RADY CHILDREN'S
18 HOSPITAL FOUNDATION—
19 SAN DIEGO, INC., a California
20 Corporation,

**COMPLAINT FOR
COPYRIGHT INFRINGEMENT
WITH DEMAND
FOR JURY TRIAL**

21 Defendant.

22 COMES NOW, Plaintiff John Durant (“Durant” or “Plaintiff”), who
23 states his claims against the defendant, as follows:

JURISDICTION AND VENUE

24 1. This action arises under the Federal Copyright Act of 1976, as
25 amended, 17 U.S.C. § 101, *et seq.* Jurisdiction is founded on 28 U.S.C. §§
26 1331 and 1338(a).

27 2. This Court has personal jurisdiction over defendant Rady Children's
28 Hospital Foundation—San Diego, Inc. (“RCHF” or “Defendant”) by virtue
of its headquarters being located within and doing business within this

district.

3. Venue is proper under 28 U.S.C. §§ 1391(b)(1) and (c) and 1400(a).

THE PARTIES TO THIS COMPLAINT

4. Durant is a citizen of and domiciled in San Diego, California.

5. On information and belief, RCHF is a California corporation registered under entity number C1294072 and may be served through its Vice-President and Executive Director, Steve Jennings, via U.S. Mail to 3020 Children's Way, MC 5005, San Diego, California 92123 or in person at 3665 Kearny Villa Road, Suite 201, San Diego, California 92123.

OPERATIVE FACTS

6. Durant is a full-time, freelance, professional photographer. As part of his profession, Durant creates photographs that display architecture and its elements, which he licenses to others for use.

7. On September 22, 2010, Durant created, was the author of, and at all times owned the copyrights to photographs of Rady Children's Hospital, including the photograph of a reception area, at issue here, as shown below (the "Photo"):



8. The Photo in perspective, orientation, positioning, lighting and other details is entirely original, distinctive, and unique; as such, the Photo is subject matter protectable under the Copyright Act.

9. Durant registered the Photo with the U.S. Copyright Office, which issued Certificate of Registration number VAu 1-042-461, with an effective registration date of October 3, 2010, as shown below:

The image shows a 'Certificate of Registration' from the U.S. Copyright Office. It features the official seal on the left and a signature of Marybeth Peters, Register of Copyrights, in the center. To the right of the signature, it states the registration number 'VAu 1-042-461' and the effective date of registration 'October 3, 2010'. Below this, the certificate details the work as 'third quarter 2010', the author as 'John J. Durant, dba John Durant', and the copyright claimant as 'John J. Durant, dba John Durant' at '3421 Tripp Ct., #4, San Diego, CA, 92121, United States'. It also lists contact information for John J. Durant, including his email 'jd@johndurant.com' and telephone '858-481-5111'. The certificate is dated 'October 3, 2010' and is labeled 'Page 1 of 1'.

Certificate of Registration

This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Registration Number
VAu 1-042-461

Effective date of registration:
October 3, 2010

Title
Title of Work: third quarter 2010

Completion/Publication
Year of Completion: 2010

Author
Author: John J. Durant, dba John Durant
Author Created: photograph(s)
Citizen of: United States
Year Born: 1953
Domiciled in: United States

Copyright claimant
Copyright Claimant: John J. Durant, dba John Durant
3421 Tripp Ct., #4, San Diego, CA, 92121, United States

Rights and Permissions
Organization Name: John Durant Photographer
Name: John J. Durant
Email: jd@johndurant.com
Address: 3421 Tripp Ct. #4
San Diego, CA 92121 United States
Telephone: 858-481-5111

Certification
Name: John Durant
Date: October 3, 2010

Page 1 of 1

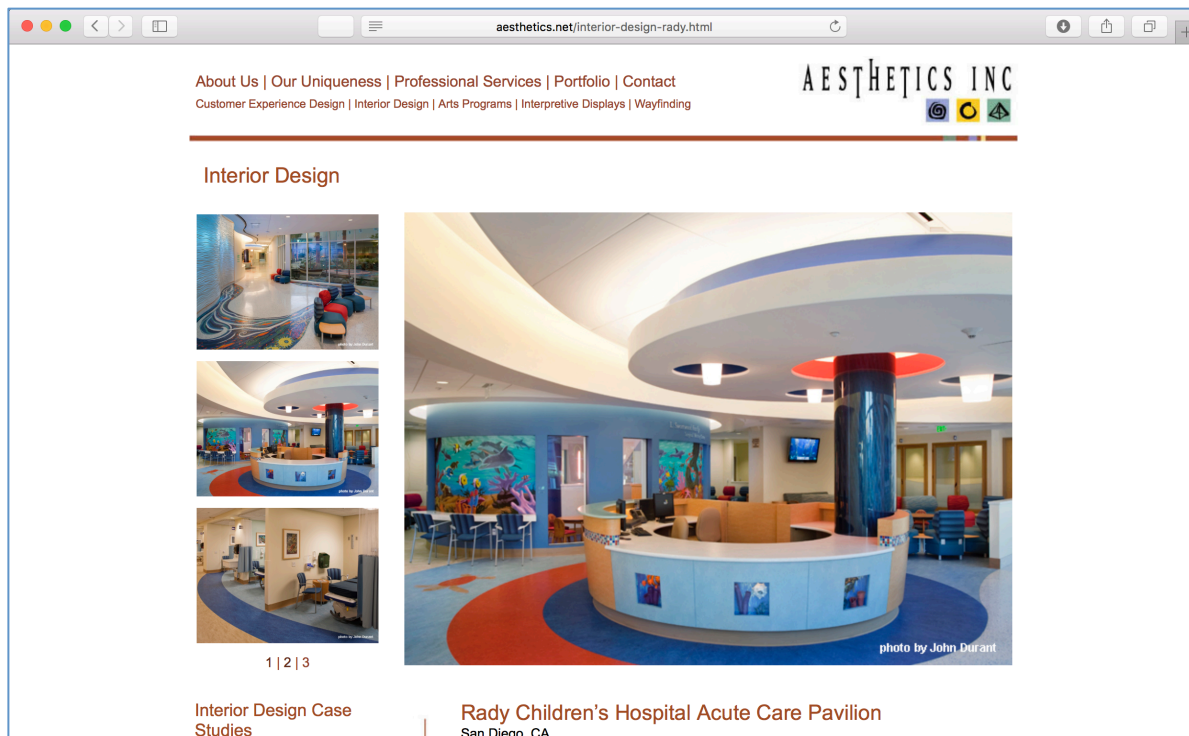
10. Durant has complied in all respects with the Copyright Act of 1976, 17 U.S.C. §101, *et seq.*, as amended, and all other laws and regulations

governing copyrights with respect to the Photo.

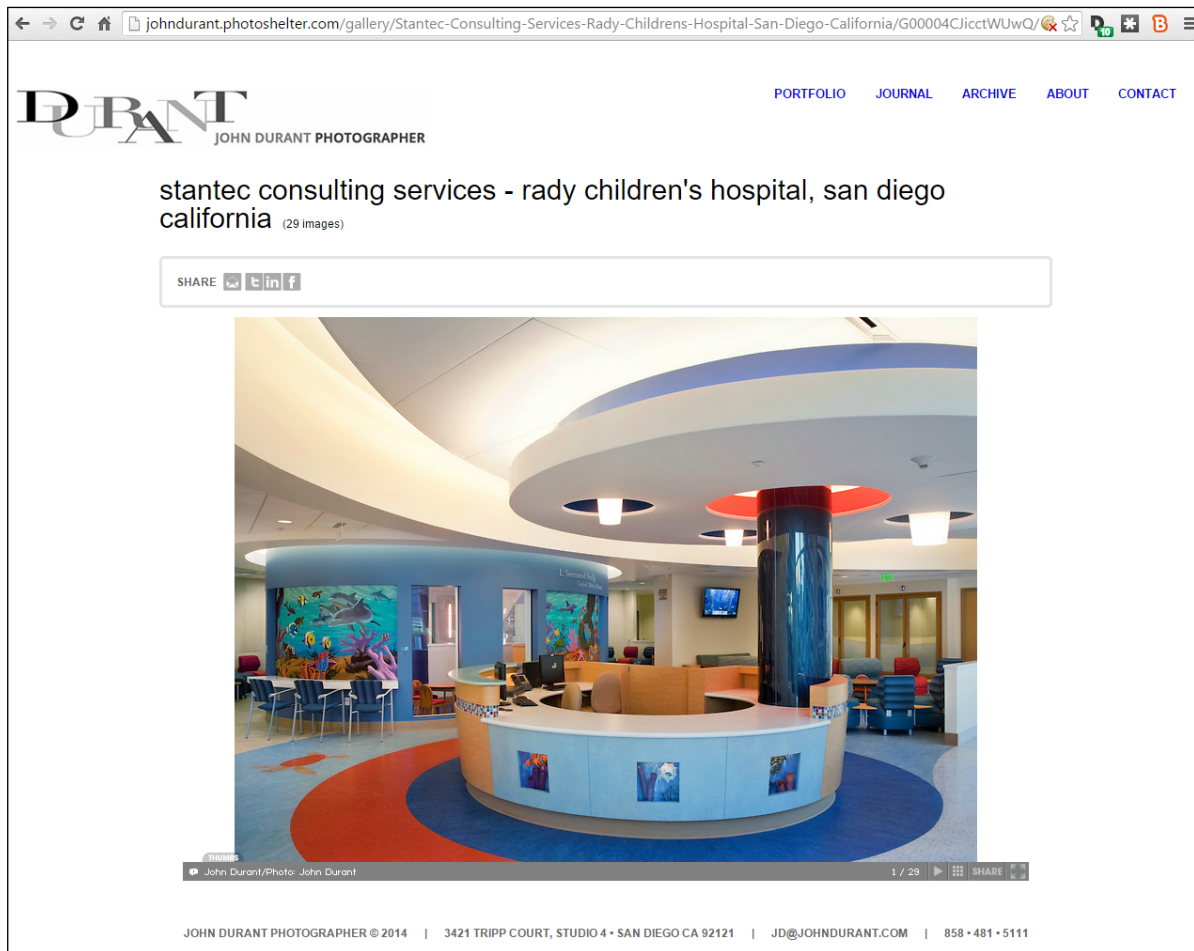
11. Durant created the Photo as a part of a project for his clients who designed the Acute Care Pavillion at Rady Children’s Hospital: Anshen & Allen Architects (now known as Stantec, Inc.) (“Stantec”) and Aesthetics, Inc. (“Aesthetics”). Durant first published the Photo when he provided it, along with other photographs from the project, to his clients on October 7, 2010.

12. Durant’s granted Stantec and Aesthetics each a limited, non-exclusive license solely for their own self-promotional use, with each license noting that “no third party rights are granted” and “[a]ny rights granted under this Limited License Agreement are non-assignable. All rights not specifically granted in this Limited License Agreement are reserved by John Durant.”

13. Aesthetics later displayed the Photo, with others from the project, on its website at <http://aesthetics.net/interior-design-rady.html>, where it included the credit line “Photos by John Durant,” as shown below:



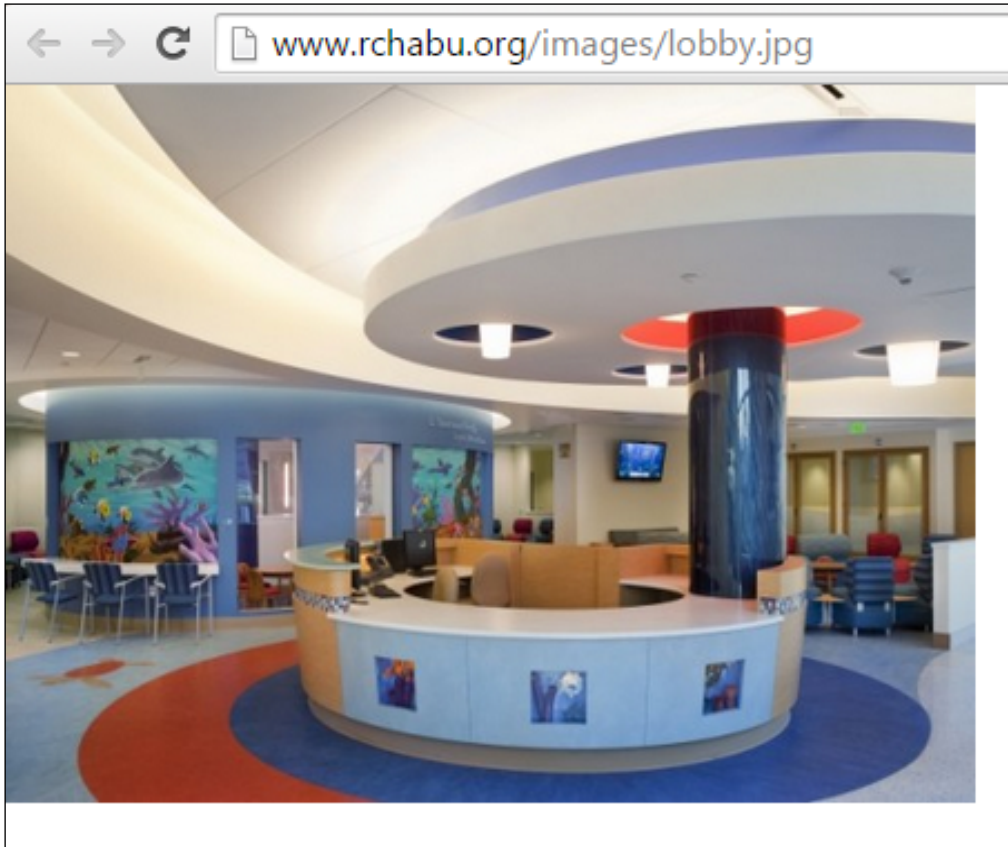
14. Starting on October 22, 2010, Durant displayed the Photo, along with others from the project, on his own website at <http://johndurant.photoshelter.com/gallery/Stantec-Consulting-Services-Rady-Childrens-Hospital-San-Diego-California/G00004CJicctWUwQ/>, where Durant posted his name, address, and phone number adjacent to the Photo, as shown below:



15. In April 2015, Durant discovered that RCHF had reproduced, displayed, and distributed the Photo as a part of the banner at the top of multiple pages of its website at www.rchabu.org (the “RCHF Website”), and at <http://rchabu.org/images/lobby.jpg>, as shown below:







15 16. Durant did not license or otherwise authorize Defendant to
16 reproduce, distribute, or display his Photo.

17
18 FIRST CLAIM

19 (Copyright Infringement by RCHF)

20 17. Durant re-alleges and incorporates by reference Paragraphs 1
21 through 16 above.

22 18. RCHF reproduced, distributed, and displayed the Photo to the public
23 via the RCHF Website.

24 19. RCHF has not compensated Durant for its reproduction, distribution,
25 or display of the Photo.

26 20. RCHF's conduct violates the exclusive rights belonging to Durant as
27 owner of the copyrights for the Photo, including without limitation,
28 Durant's exclusive rights under 17 U.S.C. § 106.

1 21. Since Durant first discovered the Defendant's reproduction, display,
2 and distribution of the Photo in April 2015, his claims are within the three-
3 year statute of limitations period pursuant to 17 U.S.C. § 507(b).

4 22. As a direct and proximate result of its wrongful conduct, RCHF has
5 realized and continues to realize profits and other benefits rightfully
6 belonging to Durant for the Photo. Accordingly, Durant seeks an award of
7 actual damages pursuant to 17 U.S.C. § 504.

8 23. Durant is entitled to and seeks statutory damages for RCHF's
9 infringement of the Photo, including attorneys' fees and costs, pursuant to
10 17 U.S.C. §§504 and 505.

11 24. Since RCHF had notice that the Photo was protected by copyright,
12 RCHF's infringement of the Photo was willful and performed with
13 knowledge that its reproduction, display, and distribution of the Photo were
14 unauthorized; Durant is therefore entitled to the recovery of enhanced
15 statutory damages for RCHF's infringement of the Photo pursuant to 17
16 U.S.C. § 504.

17
18 PRAYER FOR RELIEF

19 WHEREFORE, Plaintiff prays for judgment as follows:

- 20 1. Declare that the Defendant's unauthorized conduct violates
21 Durant's rights under common law and the Federal Copyright
22 Act;
23 2. Order that the Defendant is liable for the direct infringement of
24 Durant's Photo.
25 2. Order Defendant to account to Durant for all gains, profits, and
26 advantages derived by Defendant due to its infringement of
27 Durant's copyrights in the Photo; or such damages as are
28 proper;

3. Award Durant profits and damages in such amount as may be found pursuant to 17 U.S.C. § 504 (b) for Defendant's infringing the copyrights in the Photo;
4. Alternatively, award maximum statutory damages in the amount of \$30,000 per infringement for its infringement pursuant to 17 U.S.C. § 504 (c)(1); or such other amount as may be proper pursuant to 17 U.S.C. § 504;
5. Upon a finding that Defendant willfully infringed Durant's copyrights in the Photo, award Durant maximum statutory damages in the amount of \$150,000 for its infringement pursuant to 17 U.S.C. § 504 (c)(2); or such other amount as may be proper pursuant to 17 U.S.C. § 504;
6. Award Durant his costs, reasonable attorneys' fees, and disbursements in this action, pursuant to 17 U.S.C. § 505;
7. Enter preliminary and permanent injunctions providing that the Defendant shall deliver to Durant all copies of the infringement, and all other materials containing such infringing copies in Defendant's possession, custody or control, for destruction;
8. Enter preliminary and permanent injunctions providing that Defendant shall deliver to Durant an accounting identifying each reproduction, display, or distribution of the Photo;
9. Enter preliminary and permanent injunctions enjoining Defendant from engaging in any further acts of copyright infringement of the Photo; and,
10. For such other and further relief as the Court may deem just and proper.

Plaintiff demands a jury trial on all of the foregoing counts.

1 This 9th day of December, 2015.
2

3 Respectfully submitted,

4 /s/Leslie Burns

5 Leslie Burns (CA Bar No. 276687)

6 Carolyn E. Wright (SBN 263960)

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